



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO.     |  |  |
|---|-------------|----------------------|---------------------|----------------------|--|--|
| 10/724,518  | 11/29/2003  | Peter A. Williams    | 13768.783.55        | 8911                 |  |  |
| 47973   | 7590        | 01/23/2008           | EXAMINER            |                      |  |  |
| WORKMAN NYDEGGER/MICROSOFT<br>1000 EAGLE GATE TOWER<br>60 EAST SOUTH TEMPLE<br>SALT LAKE CITY, UT 84111 |             |                      |                     | GOODCHILD, WILLIAM J |  |  |
| ART UNIT  |             | PAPER NUMBER         |                     |                      |  |  |
| 2145  |             |                      |                     |                      |  |  |
| MAIL DATE   |             | DELIVERY MODE        |                     |                      |  |  |
| 01/23/2008  |             | PAPER                |                     |                      |  |  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/724,518             | WILLIAMS ET AL.     |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | WILLIAM J. GOODCHILD   | 2145                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 October 2007.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5,7-11,13 and 15-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-5,7-11,13 and 15-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4-5, 7-11 and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tarbutton et al., (US Patent No. 7,013,330), (hereinafter Tarbutton), and further in view of Sugiarto et al., (US Publication No 2002/0143952), (hereinafter Sugiarto).

Regarding claims 1, 11 and 19-20, Tarbutton discloses (a) communicating a content-related request, and in response, receiving download regulation data corresponding to an acceptance value and a time-window set containing at least one time value [Tarbutton, column 6, lines 52-61]; (b) determining based on a current acceptance value whether to request the content or whether to back off for a wait time before requesting the content, the wait time corresponding to a time value in the time-window set [Tarbutton, column 7, lines 42-56]; and when the determination result is to back off, delaying downloading of the content for the wait time [Tarbutton, lines 22-40]. Tarbutton does not specifically disclose when the determination result is to request the content, downloading the content for not more than the duration of a download time, and if the download is not completed within the download time, repeating steps (a) and (b) until

the download is finished, the download time corresponding to a download time value in the time-window set. However, Sugiarto, in the same field of endeavor, discloses using a period of time such as 2:05 AM to 2:10 AM [Sugiarto, paragraph 23, lines 17-19] and re-scheduling another download time when the download fails [Sugiarto, paragraph 33, lines 1-4]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a set time duration and to re-schedule a failed or interrupted download in order to make optimal use of network resources.

Regarding claim 4, Tarbutton further teaches determining whether to request the content or whether to back off comprises, generating a random number and comparing the random number with a number corresponding to the acceptance value [Tarbutton, column 8, lines 24-32].

Regarding claim 5, Tarbutton further teaches the determination result is to back off, and wherein after delaying downloading of the content for the wait time, further comprising repeating (a) and (b) [Tarbutton, lines 22-40].

Regarding claims 7 and 15, Tarbutton further teaches setting the wait time corresponding to the wait time value in the time-window set by obtaining the time value from the time-window set and varying the obtained wait time value by a random time amount [Tarbutton, column 8, lines 22-32].

Regarding claim 8, Tarbutton further teaches setting the download time corresponding to a download time value in the time-window set by obtaining the download time value from the time-window set and varying the obtained download time value by a random time amount [Tarbutton, column 8, lines 22-32].

Regarding claims 9 and 16, Tarbutton further teaches the determination result is to back off, and wherein after delaying downloading of the content for the wait time, further comprising, obtaining another acceptance percentage value from the download regulation data, setting that other acceptance percentage value as the current acceptance percentage value, and repeating step (b) [column 8, lines 12-32].

Regarding claims 10 and 18, Tarbutton further teaches a computer-readable medium having computer-executable instructions which, when executed, perform the method of claim 1 [Tarbutton, column 10, lines 16-25].

Regarding claim 17, Tarbutton further teaches updating the said download regulation data based on network load comprises obtaining information corresponding to regional load, and wherein providing download regulation data comprises said clients with a download regulation data file corresponding to each client's region [Tarbutton, column 7, lines 41-56 and column 8, lines 22-32].

3. Claims 2-3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tarbutton-Sugiarto as applied to claims 1 above, and further in view of Moshir et al., (US Publication No. 2002/0100036), (hereinafter Moshir).

Regarding claims 2 and 13, Tarbutton-Sugiarto does not specifically disclose the download time value and the wait time value both correspond to the same time value in the time-window set. However, Moshir, in the same field of endeavor, discloses the download may be delayed the time needed to download the software update [Moshir, paragraph 62, lines 4-13]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a set time delay equal to the download time in order to allow download of the software update as soon as possible in order to make optimal use of network resources.

Regarding claim 3, Tarbutton-Sugiarto-Moshir further teaches receiving said download regulation data corresponding to said acceptance value and said time-window set comprises receiving a URL to a download regulation file [Moshir, paragraph 59, lines 8-11 and 14-15].

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-5, 7-11, 13 and 15-20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM J. GOODCHILD whose telephone number is (571)270-1589. The examiner can normally be reached on Monday - Friday / 9:00 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WJG  
01/15/2008

/Jason D Cardone/  
Supervisory Patent Examiner, Art Unit 2145